IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 79 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements?

2.   To be referred to the Reporter or not?

3.   Whether Their Lordships wish to see the fair copy
        of the judgement?

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder?

5.   Whether it is to be circulated to the Civil Judge?

BALDEVJI KHODAJI THAKOR
Versus
STATE OF GUJARAT

Appearance:
     MR PR NANAVATI for Petitioner
     Mr.DN PATEL, A.P.P. for Respondents

CORAM : MR.JUSTICE M.S.PARIKH
Date of decision: 08/08/97

ORAL JUDGEMENT

1. The petitioner, an externee under the impugned
order dated 29th May 1996 passed by respondent No.2, has
preferred this petition challenging the said order as
well as the Appellate Order dated 25th October 1996
(Annexure : A) passed by respondent No.1 and the show
cause Notice dated 28th February 1995 on number of
grounds, inter-alia, on the ground appearing in Ground
No.(d) at page : 7 of the petition.

2. The said ground speaks about inordinate delay in

passing the order of externment in the context of eight registered cases, 2 of 1991, 5 of 1992 and one of 1994, the last being under the provisions of the Bombay Prohibition Act and the other offences being under the provisions of the Bombay Prevention of Gambling Act, 1887. Thus, there is delay between the last registered case and the date of show cause notice as alleged. There is also delay between the date of show cause notice and the date of externment. No Affidavit in Reply has been filed. None of the offences is under the provisions of the Indian Penal Code and yet the petitioner has been branded as "Dangerous person".

3. Rule was made returnable on 5th February 1997. The matter has come up for hearing today. No Affidavit in Reply has been filed by the respondents. In order to substantiate the aforesaid ground reliance has been placed upon a decision of this Court dated 10.12.1996 in the case between Sitaben M. Thakore V/s. Commissioner of Police in Special Criminal Application No.63 of 1996 (Coram : N.N.Mathur, J.), which in turn has referred to a Division Bench decision in Special Civil Appication No. 1295/94 decided on 24.1.1995 (Coram : K.J.Vaidya and S.D.Dave, JJ.). It has been submitted from the aforesaid decisions that the order of externment has been passed after long lapse of time which has snapped the live link in between the past acts committed by the concerned petitioner and the order of externment impugned by him.

4. In reply, it has been submitted that delay has occasioned not on account of the fault of the concerned Authority, but on account of either the fault of the complainant or on account of the fault of the externee in asmuch as evidence could not be recorded in time on account of such fault. This explanation of delay would run counter to the idea behind the concept of externment as envisaged by section 56 of the Bombay Police Act, according to which a man is to be sent out, who is engaged in the anti-social activities in a particular area so as to release the people from the said person of his illegal activities by destroying the established net-work of the evil elements in that particular locality. This Court in the aforesaid decision observed that whosoever might be responsible for passage of time, the very purpose of the exercise of power u/s. 56 is frustrated if the same are not exercised within a 'reasonableperiod', because the grounds which existed for externment would require immediate action and such grounds cannot be said to have continued for a long period.
In the result, in view of what is stated above

and in the facts of the case, this Special Criminal
Application is required to be allowed.   The impugned
order of externment dated 29th May 1995 and the order of
confirmation passed in Appeal by the Appellate Authority
on 25th October 1996 are hereby quashed and set aside.
Rule made absolute accordingly.

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